

ORIGINAL

006365

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

RECEIVED

JAN 14 10 36 AM '97

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

DOUGLAS F. CARLSON
INITIAL BRIEF

January 14, 1997

Pursuant to § 34 of the Rules of Practice, I, Douglas F. Carlson, hereby submit my initial brief in Special Services Reform, 1996 (Docket No. MC96-3).

Respectfully submitted,

Dated: January 14, 1997



DOUGLAS F. CARLSON

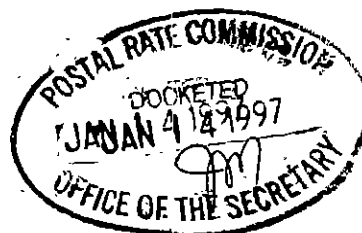


TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	NONRESIDENT FEE	2
A.	ALL THE POSTAL SERVICE'S JUSTIFICATIONS FOR THE NONRESIDENT FEE COLLAPSED UNDER CROSS- EXAMINATION BY PARTICIPANTS.	4
1.	The Postal Service has failed to demonstrate that nonresident boxholders place a higher value on their boxes than resident boxholders do.	4
2.	Aside from anecdotal evidence gleaned from a few admittedly atypical post offices, the Postal Service has produced no evidence to support its claim that the typical nonresident boxholder imposes greater costs on the Postal Service than the typical resident boxholder.	6
3.	To the extent that box shortages exist at certain postal facilities, the Postal Service has failed to explain why, on a nationwide basis, nonresidents deserve more of the blame for the problem than anyone else.	10
B.	THE COMMISSION SHOULD REJECT THE NONRESIDENT FEE UNDER §§ 3622(b)(1) AND 3623(b)(1) BECAUSE THE PROPOSAL IS UNFAIR AND INEQUITABLE.	11
1.	The nonresident fee is unfair because the Postal Service has offered no evidence to explain why nonresidents should be charged a higher fee than residents.	12
2.	Not all postal facilities are equal. Already, inequities in the postal system exist, with customers in some areas receiving better service than customers in other areas. The nonresident fee would penalize customers for escaping from poor service at their local post office by obtaining nonresident box service.	12
3.	The Postal Service's current definition of nonresident for post offices with multiple ZIP Codes is highly inequitable and discriminatory.	14
4.	The Commission should reject the nonresident fee because it violates 39 U.S.C. § 403(c), which prohibits undue or unreasonable	

discrimination by the Postal Service among
users of the mail. 17

5. The proposed nonresident fee would introduce
a discrimination that is without precedent
in either the private sector or the public
sector. 18

6. In her testimony, witness Needham has
already accidentally conceded the unfairness
and inequity of the nonresident fee. 22

C. SINCE THE POSTAL SERVICE HAS PRODUCED NO
EVIDENCE TO SUBSTANTIATE ITS CLAIM THAT
NONRESIDENT BOXHOLDERS IMPOSE GREATER COSTS ON
THE POSTAL SERVICE THAN RESIDENT BOXHOLDERS,
ADDITIONAL COSTS ARE NOT REASONABLY ASSIGNABLE
TO NONRESIDENT BOXHOLDERS UNDER 39 U.S.C. §
3622(b)(3). 23

D. ALTHOUGH THE VALUE PROVIDED BY A MAIL SERVICE
IS A CRITERION FOR RATE SETTING UNDER §
3622(b)(2), THE POSTAL SERVICE HAS NOT
SUBSTANTIATED ITS CLAIM THAT NONRESIDENTS PLACE
A HIGHER VALUE ON BOX SERVICE THAN RESIDENT
BOXHOLDERS DO, NOR HAS IT PROVIDED ANY EVIDENCE
TO SUPPORT ITS CLAIM THAT THE ADDITIONAL VALUE
EQUALS \$36. 24

E. ALTHOUGH 39 U.S.C. § 3622(b)(4) AND § 54(a)(1)
OF THE RULES OF PRACTICE REQUIRE THE COMMISSION
TO CONSIDER THE EFFECT OF A RATE INCREASE ON
THE GENERAL PUBLIC, THE POSTAL SERVICE HAS
PROVIDED THE COMMISSION WITH INSUFFICIENT
INFORMATION WITH WHICH TO MAKE THIS
DETERMINATION 25

III. POST-OFFICE-BOX FEES 30

A. THE PROPOSED POST-OFFICE-BOX FEES ARE AN
UNFAIR, UNJUSTIFIED ASSAULT ON GROUP IC
BOXHOLDERS. 30

1. The main reason for the proposed fee
increase is blatantly obvious: to make money
off of boxholders. 31

2. High CMRA fees are not evidence of the value
of post-office-box service 32

B. THE POSTAL SERVICE HAS NOT PROVEN THE EXISTENCE
OF A NATIONWIDE BOX SHORTAGE THAT WOULD JUSTIFY
HIGHER FEES TO SUPPORT EXPANSION OF BOX
SECTIONS. 34

1. The preponderance of the evidence in the
record suggests that a nationwide box-
shortage problem does not exist. 34

2. The mere fact that a post office has no boxes available in a particular size is not evidence that a shortage exists or that expansion is warranted.	36
3. In the absence of evidence indicating that a significant number of offices experience box shortages severe enough to warrant box expansions, the Commission cannot approve a fee increase for the purpose of financing box-section expansions.	37
C. THE COMMISSION SHOULD NOT APPROVE HIGHER FEES FOR BOXES UNLESS IT IS ASSURED THAT THOSE HIGHER FEES ACTUALLY WOULD BE USED FOR BOX EXPANSIONS.	37
D. WITNESS CALLOW'S PROPOSAL IS A FAIR AND EQUITABLE FEE SCHEDULE FOR BOXES.	37
IV. RETURN RECEIPT	39
A. THE PROPOSED CLASSIFICATION CHANGE FOR RETURN RECEIPT IS NOTHING MORE THAN AN UNJUSTIFIED FEE INCREASE DISGUISED AS AN UNWANTED SERVICE ENHANCEMENT.	39
1. The revised return-receipt service would provide every customer with a "service enhancement" that customers, when they were free to choose, overwhelmingly elected not to purchase.	39
2. Cost data do not support a 40-cent fee for this service enhancement.	40
3. The Postal Service apparently is not truly committed to providing quality return-receipt service.	40
4. The Commission should approve the classification change but maintain the current fee of \$1.10.	43
V. POSTAL CARDS	43
A. MANUFACTURING COSTS ARE ALREADY ATTRIBUTED TO POSTAL CARDS AND INCLUDED IN THE 20-CENT RATE. THEREFORE, AN ADDITIONAL TWO-CENT FEE WOULD PROVIDE A DOUBLE RECOVERY.	44
B. POSTAL CARDS COST CONSIDERABLY LESS TO PROCESS THAN POST CARDS. THEREFORE, IF ANYTHING, THE POSTAL SERVICE SHOULD BE PROPOSING A PRICE DECREASE TO ENCOURAGE CUSTOMERS TO USE POSTAL CARDS.	44
C. A SURCHARGE ON POSTAL CARDS IS INAPPROPRIATE BECAUSE CONSUMERS DO NOT HAVE READY ACCESS TO	

PRE-CUT CARD STOCKS THAT ARE AS COMPATIBLE WITH AUTOMATION AS POSTAL CARDS.	45
D. THE COMMISSION SHOULD NOT APPROVE THE PROPOSED SURCHARGE FOR POSTAL CARDS BECAUSE ANY POSTAL CLERK WHO SOLD THE CARDS WOULD BE IN VIOLATION OF THE LAW.	46
VI. CONCLUSION	48

I. INTRODUCTION

In its Request for an Opinion and Recommended Decision, the Postal Service asks the Postal Rate Commission to approve fee increases for a variety of special services. Although the Postal Service titled this case as the third phase of Classification Reform, the case is, in reality, an attempt to raise revenue under the guise of classification reform. Significantly, the Postal Service is attempting to obtain additional revenue from services that, in general, few individual or commercial customers use in a significantly large quantity to warrant active, organized opposition. For example, the typical individual or business customer probably has only one post-office box. Most individuals probably use certified mail and return receipt only occasionally; they probably use registered mail even less often.

Unfortunately, individual consumers are not a particularly well organized constituency, especially when the financial burden of a proposal on each individual is fairly low. In contrast, commercial customers are well organized and can finance legal and expert assistance to influence cases pending before the Commission. By electing to request an increase in fees only for the special services selected in this case, the Postal Service is attempting to saddle individuals who use these special services with an unfair burden for institutional costs. Several aspects of the Postal Service's request run afoul of the statutory requirement that requests for rate increases and reclassification be fair and equitable. 39 U.S.C. § 3622(b)(1) and § 3623(b)(1). Therefore, the Commission should view this entire request skeptically and scrutinize with particular care the proposals that have no basis in law, fact, or reality.

I concur with OCA witnesses Sherman and Thompson and Direct Marketing Association, Inc., in generally opposing this piecemeal rate increase, even on services that I have not chosen to discuss in detail in my initial brief. OCA-T-100, OCA-T-200, Brief of Direct Marketing Association, Inc. (January 7, 1997). To require

customers of only certain services to shoulder the burden for satisfying the Postal Service's desire for additional revenue clearly is unfair and a violation of 39 U.S.C. § 3622(b)(1). Also absent from the request is a rationale for assigning a greater portion of institutional costs to customers of these services.

While I oppose all fee increases in this case for the reasons witnesses Sherman and Thompson set forth in their testimony and Direct Marketing Association, Inc., explained in its brief, in my initial brief I also will explain in detail my opposition on specific additional grounds to the following Postal Service requests:

- The nonresident fee for post-office boxes;
- The increase in fees for Group I post-office boxes;
- The increase in the fee for return receipt; and
- The two-cent fee increase for postal cards.

II. NONRESIDENT FEE

The Postal Service's proposal for a nonresident fee for post-office-box customers must be rejected because it is unfair and inequitable. The proposal is unfair because the Postal Service has failed, over the course of six months, to produce any evidence to justify singling out nonresident boxholders and charging them a higher fee than resident boxholders. The proposed fee also would be inequitable, regardless of how the term nonresident ultimately were defined, because it would treat similarly situated people differently.

In its direct case, the Postal Service proffered several justifications for the nonresident fee. These reasons for the fee fall generally into three categories. First, the Postal Service claimed that nonresident boxholders place a higher value on box service than residents do. However, when pressed by

participants during cross-examination, Postal Service witnesses Needham and Steidtmann were unable to substantiate--with specific evidence--their claim that nonresidents place a higher value on box service than residents do. In addition, witness Needham was unable to explain how the Postal Service arrived at the specific dollar amount of the nonresident fee, \$36. The Postal Service has produced no evidence to support its claim that nonresidents place a higher value on their boxes than residents do.

Second, the Postal Service claimed that nonresident boxholders impose greater costs on the Postal Service than residents. Aside from witness Needham's illogical conclusions and baseless assertions, the only evidence about costs imposed by nonresidents came from witness Landwehr. Cross-examination of witness Landwehr revealed that no studies were conducted to support the Postal Service's assertions about costs, and witness Landwehr was forced to admit that at least one of the alleged burdens that supposedly was unique to nonresidents was instead personal to the boxholders, and the boxholders' residence status was totally irrelevant to these costs. Most importantly, witness Landwehr, an honest and candid witness, admitted that the value of his testimony to this case was limited to the experience of three atypical post offices. Tr. 3/493, lines 20-23. Since this proposal would apply to tens of thousands of post offices nationwide, and possibly affect millions of customers, witness Landwehr's testimony is of little value to the Commission in reaching a decision on this proposed fee. Moreover, the testimony is insufficient to permit the Commission to consider the effect of the rate increase on the general public, as required by 39 U.S.C. § 3622(b)(4).

Third, the Postal Service seemed, at least in part, to be blaming alleged box shortages on nonresident boxholders. Aside from the experience of admittedly atypical post offices, the Postal Service introduced no evidence to justify pinning the blame for box shortages on nonresidents. Indeed, participants

have shown that even the Postal Service's claim that box shortages exist is overblown. See section III.B.1., infra.

As I discuss in detail below, the Postal Service has failed to substantiate any of its claims that might possibly justify singling out nonresident boxholders for special treatment. Absent any justification for treating nonresidents differently, the proposal clearly would be unfair. Moreover, as I also will explain, because no basis exists for treating nonresident boxholders differently, the inequity of this proposal is so obvious as to be almost comical, as I demonstrated with a map of cities in California's East Bay at the hearing on November 25, 1996, during my cross-examination of witness Raymond. Also, since the Postal Service's request ignores the many reasons why customers seek nonresident box service--e.g., to avoid service problems and short lobby hours at their local post office, as I explained in my testimony--additional reasons exist why the nonresident fee would be unfair and inequitable.

**A. ALL THE POSTAL SERVICE'S JUSTIFICATIONS FOR THE
NONRESIDENT FEE COLLAPSED UNDER CROSS-EXAMINATION BY
PARTICIPANTS.**

In its request, the Postal Service attempted to justify a nonresident fee based on value, costs, and box shortages. Participants have exposed the fallacies in each of these arguments.

**1. The Postal Service has failed to demonstrate that
nonresident boxholders place a higher value on their
boxes than resident boxholders do.**

Sections 3622(b)(2) and 3623(b)(2) permit the Commission to consider the value to customers of a postal service in making a recommended decision on a requested rate increase or reclassification. Postal Service witness Steidtmann asserted in this case that nonresidents place a greater value on box service than residents do and that an additional fee for nonresident box

service would be consistent with "general retailing practices."¹ USPS-T-2 at 4, lines 15-19. However, as the Postal Service's expert witness Ellard testified, we can reach conclusions about the comparative behavior of two groups only if we have information about the individual behavior of each group. Tr. 2/385. Thus, the Commission may conclude that nonresidents place a higher value on their boxes than residents do only if the Postal Service presents information identifying the value that residents place on their boxes and the value that nonresidents place on their boxes. The record is completely devoid of any evidence with which this comparison can be made.

Because witness Steidtmann has no evidence with which to back up his claim, at least two plausible counterarguments undermine his assertion. For purposes of this discussion, I will focus on a Group IC, size 1 box customer who currently pays \$40 per year for his box. First, customers may seek nonresident box service because they place a value on a resident box of significantly less than \$40 per year. For example, the lobby hours and reliability of service at the Emeryville post office are inadequate, so I would place a low value on a local box in Emeryville. See Tr. 2513-15 (DFC at 2-4) and Tr. 8/2544-45 (USPS/DFC-4). Specifically, if I were not interested in having the box for testing purposes, I might value a box in Emeryville at only \$10. On the other hand, I might value a box in Berkeley at \$40, the fee that I currently pay. Although under these facts I place a higher value on my nonresident box than I would on a resident box, the higher value merely restores my value to \$40, the current fee, as I am merely fulfilling with the Berkeley box the \$40 value that the Emeryville box cannot provide. The higher value that I place on a nonresident box would not justify a surcharge above and beyond \$40. The Postal Service has so little evidence to support its claims that witness Steidtmann was forced to admit that a customer such as I could very well be the

¹Of course, this case involves postal rates, which must be set according to law, not to general retailing practices.

typical, or "core," nonresident customer. Tr. 2/962 at lines 17-25 and 2/963 at lines 1-11. Therefore, if most nonresident boxholders seek a nonresident box because they value a resident box at less than \$40, while they value a nonresident box at or near \$40, a \$36 nonresident surcharge would not make sense.

Second, even if nonresident boxholders place a value of, say, \$70 on their nonresident box at a particular location, it is quite possible that the resident boxholders also place a value of \$70--or more--on their resident boxes at the same location. In fact, in Middleburg, Virginia, the Postal Service's favorite example of a supposedly prestige address, the resident boxholders may very well place a higher value on their boxes than the nonresident boxholders do. For example, the residents presumably face higher property values and prices. Therefore, they may perceive the prestigious address as particularly important in helping them to recover their investment. Or, since both the residents and nonresidents are benefiting from the prestige address, the residents might place a higher value on a Middleburg box than nonresidents do because residents do not have to drive several miles to pick up their mail. The Postal Service's claim that nonresidents should be subject to a surcharge because they place a higher value on their boxes than residents do would collapse if Middleburg residents valued box service at, say, \$80, while nonresidents valued box service in Middleburg at only \$70. The record, however, is so devoid of evidence--either for Middleburg or for post offices on a nationwide basis--that we do not know whether my hypothesis or witness Steidtmann's assumption is the correct one. Without more information, the Commission certainly cannot adopt the Postal Service's unwarranted contention.

2. **Aside from anecdotal evidence gleaned from a few admittedly atypical post offices, the Postal Service has produced no evidence to support its claim that the typical nonresident boxholder imposes greater costs on the Postal Service than the typical resident boxholder.**

The Postal Service relies on witness Landwehr's testimony in claiming that nonresidents create costlier situations for the Postal Service than residents. Although I will analyze witness Landwehr's testimony, it is critical to remember that he admitted on the witness stand that his testimony is "valuable only to the extent that it describes the experiences of three atypical post offices." Tr. 3/493, lines 20-23.

Witness Landwehr identified various types of costs that supposedly are associated with nonresident boxholders. I will state each type of cost that witness Landwehr identified and then discuss the low significance of his testimony concerning the supposed cost for this case:

a. "[Nonresident] customers tend to call for their mail infrequently and at irregular intervals," thus creating storage problems. USPS-T-3 at 4, lines 19-21. No studies, however, have been conducted to determine whether typical nonresident customers on a nationwide basis tend to call for their mail infrequently. Tr. 3/431 (DFC/USPS-T3-6) and Tr. 3/410 (DBP/USPS-T3-2). In fact, during cross-examination, witness Landwehr testified that (1) his post office is representative of most post offices with respect to box accumulations, and (2) box accumulations are not a problem at his post office. See Tr. 2/472-75 and Tr. 2/478-80. Thus, by witness Landwehr's own admission, box accumulations are not a problem, so the Commission cannot approve a nonresident fee based on box accumulations.

Witness Landwehr's testimony is consistent with other testimony in this case. For example, witness Needham identified convenience as one reason for seeking nonresident box service. USPS-T-7 at 33, lines 15-19. If nonresidents do, indeed, seek box service for convenience reasons, presumably the more-convenient box would allow them to check their mail more frequently than if they had a less-convenient resident box. Thus, one would expect that nonresidents would not be causing box-accumulation problems. In fact, the Postal Service should be

preferring customers who seek convenient boxes, not penalizing them with higher fees. See, e.g., Tr. 3/472-75.

b. Nonresident customers generate higher-than-average rates of temporary forwarding orders and mail-hold requests. USPS-T-3 at 4, lines 21-24. The Postal Service has provided no studies or data to support this statement. Tr. 3/410 (DBP/USPS-T3-2).

c. Nonresident customers cause a large number of Freedom of Information Act requests. USPS-T-3 at 7, lines 16-20. Again, the Postal Service has no study or data to support the claim. See Tr. 3/428 (DFC/USPS-T3-3). Moreover, during cross-examination witness Landwehr admitted that the FOIA requests are personal to the individuals and not related to the residence status of these boxholders; thus, the Postal Service would be served with these requests regardless of the location of the post office at which the individual whose street address was being sought actually obtained box service. See Tr. 3/489, line 24 through Tr. 3/491, line 9.

d. All communications are by long distance. USPS-T-3 at 7, lines 23-24. Assuming these concerns are related to long-distance telephone charges, the Postal Service could solve the problem by making collect calls. In any event, no study has been provided to estimate these costs. In addition, in many large metropolitan areas a person could live very close to the post office and yet be considered a nonresident. Telephone calls to such a nonresident customer would be local, not long-distance.

e. "Use of the box is difficult to control, since many box holders routinely allow other parties to use their boxes." USPS-T-3 at 7, lines 25-26, and at 8, line 1. No study has been conducted comparing the incidence of this behavior between nonresidents and residents. Tr. 3/429 (DFC/USPS-T3-4) and Tr. 3/410 (DBP/USPS-T3-2).

f. **"Infrequent use of the box results in a higher than normal incidence of lost or forgotten box keys."** USPS-T-3 at 8, lines 2-3. Once again, the Postal Service has provided no study or data comparing the incidence of this behavior between nonresidents and residents. Tr. 3/430 (DFC/USPS-T3-5) and Tr. 3/410 (DBP/USPS-T3-2).

g. **"Many customers are unable to fill out the necessary forms without assistance, and require time consuming [sic] explanations of the services available."** USPS-T-3- at 8, lines 6-8. Witness Landwehr was not claiming that nonresident boxholders are less able than resident boxholders to fill out forms without assistance, so this problem is irrelevant to this case. Tr. 3/433 (DFC/USPS-T3-8).

h. **Nonresidents open mail in the lobby and summarily discard envelopes and packaging materials, creating lobby clutter.** USPS-T-3 at 9. Yet again, we have no study or data to support the contention that nonresident boxholders create costlier situations for the Postal Service than resident boxholders. Tr. 3/432 (DFC/USPS-T3-7) and Tr. 410 (DBP/USPS-T3-2).

i. **"Non-residents are often late in paying box fees and sometimes return after their boxes have been closed, demanding their old box number back--notwithstanding that new box customers are already receiving service."** USPS-T-3 at 10, lines 8-11. As before, we have no study or data to support the claim that nonresident boxholders create costlier situations for the Postal Service than resident boxholders. Tr. 3/427 (DFC/USPS-T3-2).

In sum, witness Landwehr's testimony clearly does not support the conclusion that nonresidents create costlier situations for the Postal Service than residents do. Yet, citing witness Landwehr's testimony, witness Needham claims that nonresident boxholders are "more apt to present costlier situations than nonresidents." Tr. 3/655 (DFC/USPS-T7-6). I explored witness Needham's contention extensively during oral

cross-examination. Tr. 3/744, line 10 through Tr. 3/758, line 18. While admitting that she had no studies with which to back up her claim, and ignoring her own testimony about the convenience of nonresident boxes, witness Needham insisted that nonresidents impose more-costly situations on the Postal Service than residents do. Tr. 3/751, lines 2-5. Of course, witness Needham's illogical claims and baseless assertions aside, the Commission cannot possibly conclude that nonresidents impose greater costs on the Postal Service than residents do without evidence about the behavior of both residents and nonresidents.² See witness Ellard's testimony at Tr. 2/385, where he testified that we can reach conclusions about the behavior of two groups only if we have information about the individual behavior of each group. Moreover, if it were true that nonresidents are imposing additional costs on the Postal Service, one would wonder why the Postal Service would be encouraging customers, in its own publication, to obtain nonresident boxes. See Tr. 8/2528 (DBP/DFC-2) and LR-DFC-1 at 7.

3. To the extent that box shortages exist at certain postal facilities, the Postal Service has failed to explain why, on a nationwide basis, nonresidents deserve more of the blame for the problem than anyone else.

I explain in section III.B.1., infra, why no nationwide box-shortage problem exists. In addition, OCA witness Callow explains why no nationwide box-shortage problem exists. Tr. 1527 (OCA-T-300 at 9-12). Moreover, the Postal Service has no evidence to support a contention that nonresidents are to blame

²Witness Needham's "logic" can best be seen in the following exchange:

Q: So if I -- if I told you that it rained on a sunny day, could we conclude from that that it would be more likely to rain on a sunny day than a cloudy day, or would you like to know the frequency -- how often it rains on a sunny day and how often it rains on a cloudy day?

A: Well, the only thing I can tell you is it did rain on a sunny day a few days ago and there was a very beautiful rainbow.

* * *

Tr. 2/751, lines 10-17.

for a nationwide box-shortage problem. Therefore, a nationwide nonresident fee in response to this myth is not justified, either.

Box shortages apparently do exist at certain facilities. Witness Needham suggests that the nonresident fee might cause nonresidents to give up their boxes, thus making more boxes available for residents. USPS-T-7 at 25, lines 5-6. However, the Postal Service has failed to demonstrate that nonresidents would not migrate to other offices and simply shift the box-shortage problem. Tr. 5/1528, lines 2-4 (OCA-T-300 at 10). Moreover, for offices that offer both carrier delivery and box service, the Postal Service has failed to explain why it apparently would like nonresidents to give up their boxes so that more boxes would be available for residents. The Postal Service suggests that this result would be favorable. USPS-T-7 at 41, lines 23-24 and at 42, lines 1-2. However, when pressed to explain why a resident has more of a right to a box at a particular facility than a nonresident, witness Needham stated that the Postal Service does not prefer residents over nonresidents. Tr. 3/652-53 (DFC/USPS-T7-4(c)). In fact, one could argue that a resident of, say, Beverly Hills can choose between carrier delivery and box service, while a nonresident has only one option--the post-office box--for receiving mail in Beverly Hills; thus, perhaps nonresidents should have first priority for post-office boxes in Beverly Hills.

In sum, the record is devoid of any evidence to confirm that nonresidents are responsible for box shortages in more than a handful--0.07 percent--of post offices nationwide. Tr. 5/1529 at line 1 and Tr. 5/1530 at lines 1-2 (OCA-T-300 at 10A-11). The Commission cannot approve a nonresident fee based on this scant evidence.

B. THE COMMISSION SHOULD REJECT THE NONRESIDENT FEE UNDER §§ 3622(b)(1) AND 3623(b)(1) BECAUSE THE PROPOSAL IS UNFAIR AND INEQUITABLE.

My opposition to the nonresident fee arose long before I decided to intervene in this case and weeks before I looked at 39 U.S.C. § 3622(b)(1) for the first time. As soon as I read the newspaper article reporting the proposed nonresident fee, I knew that the proposal was unfair and inequitable. Stated briefly, the proposed nonresident fee is unfair because the Postal Service has produced no evidence to explain why nonresidents should be discriminated against by being singled out and charged a higher fee. The proposed nonresident fee is inequitable because similarly situated people would be charged vastly different fees, for no justifiable reason.

1. **The nonresident fee is unfair because the Postal Service has offered no evidence to explain why nonresidents should be charged a higher fee than residents.**

The justifications the Postal Service offered for the nonresident fee centered around value to customers, costs, and box shortages. As I explained in detail in section II.A., supra, under cross-examination Postal Service witnesses were unable to provide any specific evidence to support their claim that nonresidents place a higher value on their boxes than residents; that nonresidents impose greater costs on the Postal Service than residents; and that nonresidents are responsible for the alleged nationwide box-shortage problem. A fee charged to a subset of customers would be arbitrary and unfair absent a rational reason for treating those customers differently; in fact, it would be discriminatory.

2. **Not all postal facilities are equal. Already, inequities in the postal system exist, with customers in some areas receiving better service than customers in other areas. The nonresident fee would penalize customers for escaping from poor service at their local post office by obtaining nonresident box service.**

As I explained in my testimony and responses to interrogatories, some postal facilities allow 24-hour access to their box lobbies, while other facilities provide access for very

limited hours, such as 8:30 AM to 5:00 PM Monday through Friday, 8:00 AM to 2:00 PM on Saturday, and no hours on Sunday. See Tr. 8/2513-14, 2516 (DFC at 2, 3, and 5), and Tr. 8/2554 (Attachment 1 to Response to USPS/DFC-7); see also USPS-T-4 at 12 (Table 8B), which reveals that approximately (only) 42 percent of post offices provide 24-hour access to the box lobby. I can only speculate as to the reasons for the variation in lobby hours at various post offices. Tr. 8/2620. In any event, the variation exists, so the level of access a boxholder will have to his box depends, in large part, on where he happens to live.

The quality of delivery service also varies from post office to post office. See Tr. 2518-21 (DFC at 7-10), about my experience and the experience of Valerie Horwitz, and Tr. 8/2531-32 (DBP/DFC-5). Customers sometimes are not able to obtain solutions to their delivery problems from the Postal Service. See Tr. 8/2520, lines 5-7 (DFC at 9) and Tr. 2531-34 (DBP/DFC-5 and 6). Often, obtaining a box at a nonlocal post office is a person's most practical solution to delivery problems. Tr. 2530-34 (DBP/DFC-4 and 6). If the nonresident fee were approved, customers would have to choose between poor service at their local post office or a surcharge--or penalty, really--for seeking better service at another post office.

I already resent the fact that I must obtain box service in Berkeley, rather than at the convenient, nearby Emeryville post office. Nonetheless, I make the sacrifice because the short lobby hours and poor delivery service in Emeryville make a box there unacceptable and virtually worthless. See Tr. 8/2513 (DFC at 2) and Tr. 8/2546-50 (USPS/DFC-5). To impose a nonresident fee on me for obtaining a box in Berkeley would be unfair and inequitable, given that residents of Berkeley would be eligible for the better service and longer hours of their post office without a surcharge merely because they happen to live in Berkeley. Similarly, it would be unfair and inequitable to charge me a nonresident fee because I happen to have the

misfortune, through no fault of my own, of being served by a local facility that provides inadequate service. This outcome is a necessary consequence of the Postal Service's proposal; but the outcome would be manifestly unfair and inequitable given that all post offices are not, to begin with, equal.

3. The Postal Service's current definition of nonresident for post offices with multiple ZIP Codes is highly inequitable and discriminatory.

Under the Postal Service's current definition of nonresident, a customer who lives in an area under the jurisdiction of a post office with multiple ZIP Codes would be eligible to obtain a box at any facility under the jurisdiction of that post office, without paying the nonresident fee. Status Report of United States Postal Service on Implementation of Special Services Reform Proposals (October 23, 1996). Thus, since the postal facility in Emeryville is a branch of the Oakland post office, I could obtain a box at no extra charge over five miles away at the Airport Station, or at any other station in Oakland, but I would pay a surcharge one mile away in Berkeley. See Tr. 8/3243, lines 17-25, and Tr. 8/3244, lines 1-10. Since Oakland has approximately 15 facilities that offer box service, I could obtain a box anywhere in Oakland without an extra charge--but I would pay an extra charge for obtaining a box in Berkeley or Alameda or Albany, cities that are closer than some of those facilities in Oakland. Tr. 8/2516, lines 17-19 (DFC at 5).

I believe that I am similarly situated to people who live in Berkeley, since, among other reasons, I live one-half mile from the southern city limit of Berkeley. See Tr. 8/2551 (USPS/DFC-6) for further explanation. I do not agree that it would be equitable to charge me, but not a Berkeley resident, a nonresident fee for obtaining box service in Berkeley, since I clearly am similarly situated to Berkeley residents. Moreover, I

arguably am considerably more similarly situated to Berkeley residents than people who live in distant parts of Oakland.

I asked witness Raymond to explain why this situation would be equitable. Tr. 8/3246, lines 15-19. Because he was not able to provide an answer to my question, he merely reiterated that the "principle" of the proposal is to allow people to obtain a box at the post office that serves them. Id. at lines 20-25 and Tr. 8/3247, lines 1-9. He also asserted that my situation is a "geographical fluke." Id. at lines 5-9. He added that "you can always find some sort of example of where juxtapositions of lines and customers appear to create anomalies." Id. at lines 14-16. On redirect, the Postal Service attempted to marginalize my examples and the examples of Chairman Gleiman as "atypical." Tr. 8/3299, lines 15-18. On re-cross, witness Raymond testified that situations where customers are on opposite sides of a line are "worst-case scenarios." Tr. 8/3301, lines 15-17. Witness Raymond then admitted that it is "typical" to find customers on either side of a line. Id. at lines 24-25 and Tr. 8/3302, lines 1-12. Thus, these supposedly anomalous situations are, in fact, typical; that is, all across the country, the nonresident fee would generate senseless, serious inequities. This proposal creates so many "anomalies" and apparent "geographic flukes" precisely because the nonresident fee itself is irrational.

I am, to an extent, fortunate to live under the jurisdiction of a large post office, since I would have 15 facilities from which to choose a box without paying the nonresident fee--even though, in reality, I do not desire a box at any of the facilities. The inequity of the nonresident fee is even more serious for people whose local post office has just one facility. For example, a person who lives in Los Angeles (ZIP Code 900) probably has at least 20 or 30 facilities from which to choose when obtaining box service. An adjacent suburb of Los Angeles, such as Marina del Rey, has one independent post office with one facility that offers box service. The Postal Service proposal

would provide a Marina del Rey resident one facility from which to obtain box service, while his neighbors in adjacent Los Angeles could choose from 20 or 30 facilities. It is hard to imagine how these residents could not be similarly situated; indeed, the Marina del Rey resident probably has more in common with residents of the western side of Los Angeles, where Marina del Rey is located, than the residents of the western side of Los Angeles have with the residents of the eastern side of Los Angeles. Yet the Postal Service would treat all the residents of Los Angeles similarly, while the residents of the western side of Los Angeles and the residents of Marina del Rey would be subject to a fee differential of \$36. Even more troubling, the Marina del Rey resident might live closer to a station in Los Angeles than his own post office in Marina del Rey.

I attempted to explore this issue with witness Raymond. The transcript at 8/3234, line 7 through 8/3241, line 17 is well worth reviewing. My discussion with witness Raymond reflects the Postal Service's apparent failure even to comprehend, let alone explain, the unfairness and inequity of situations such as this one. Remarkably, witness Raymond attempted to shift my focus away from the customer who lives in the suburb but desires box service a mile away in Los Angeles by suggesting that "As a practical matter, I don't know how many customers of Los Angeles are going to do anything other than seek their local postal facility. . . ." Tr. 8/3236, lines 10-12. He added, "If I live in part of a greater Los Angeles post office service area, I will go to my local facility." In effect, witness Raymond was dodging the issue by assuring me that most people would not be nonresident boxholders and, therefore, would be unaffected by the inequity and discrimination of the nonresident fee. The Commission must not allow the Postal Service to propose an inequitable fee structure and then dismiss the inequity and discrimination by asserting that inequity is not a concern because most people would not be subject to the fee.

In summary, the nonresident fee would be highly inequitable for customers who live in areas served by branches of post offices with multiple ZIP Codes. By definition, a branch, such as Emeryville, is located outside the municipality, such as Oakland, in which the supervising post office is located. Thus, an Emeryville resident could obtain a box anywhere in Oakland but nowhere in Berkeley, even though he may be more similarly situated to a Berkeley resident than an Oakland resident. This result would make no sense to customers, who do not judge equity based on Postal Service administrative structures. Not surprisingly, in enacting § 3623(b)(1) Congress certainly could not have intended for the Commission to judge equity by examining only the Postal Service's administrative structure, either.

The nonresident fee also would be inequitable and discriminatory for customers who live in cities served by a post office with a limited number of facilities, such as Marina del Rey, when their neighbors in a very large city, such as Los Angeles, have multiple choices of facilities. The Postal Service has been unable to explain why it would be equitable to charge a \$36 fee differential for people who are very similarly situated yet just happen to live under the jurisdiction of different post offices. Again, the equitability requirement of § 3623(b)(1) certainly compels the Commission to look beyond the Postal Service's administrative structure; any other analytical method would be too narrow. Thus, the mere fact that the administrative organization of the Postal Service would permit a Los Angeles resident to have 20 to 30 choices of facilities but the Marina del Rey resident to have just one does not imply equity. Instead, the Commission must consider whether people are similarly situated, and if they are, these customers must be charged similar fees. All too often, however, the nonresident fee would charge different fees to similarly situated people.

4. The Commission should reject the nonresident fee because it violates 39 U.S.C. § 403(c), which prohibits undue or

unreasonable discrimination by the Postal Service among users of the mail.

In passing the Postal Reorganization Act, Congress sought to prohibit precisely the type of arbitrary and unreasonable discrimination that the Postal Service proposes in this case. The nonresident fee is discriminatory because it would impose different fees on similarly situated people when no reason exists for singling out nonresident boxholders for special treatment. Moreover, even if there were a general reason for treating nonresident boxholders differently, the proposal would be discriminatory in situations involving large cities and small, adjacent suburbs, as described in section II.B.3. The Commission must reject the nonresident fee because it would violate 39 U.S.C. § 403(c).

5. The proposed nonresident fee would introduce a discrimination that is without precedent in either the private sector or the public sector.

Section 101 of the Postal Reorganization Act provides that the "United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States * * *" [emphasis added]. 39 U.S.C. § 101(a). Clearly, then, the Postal Service's mission, as well as its name, is service.

In this case, the Postal Service has not introduced any evidence to support a contention that a resident of a particular community has more of a right to receive service from his local post office than a nonresident, whether that nonresident wishes to mail letters, use window services, or obtain box service. In fact, if anything, witness Needham has confirmed that the Postal Service does not have a preference. Tr. 3/652 (DFC/USPS-T7-4(c)).

When dissected to its fundamental elements, the nonresident fee is an attempt by an agency, at outlets that it operates, to charge different fees based solely on the customer's residence

status, even though the agency does not incur greater costs of providing service to residents versus nonresidents. See section II.A.2., supra.

In her original testimony, witness Needham cited several examples of other fees that supposedly parallel the discriminatory nature of the proposed nonresident fee. After those examples were shown during cross-examination not to be analogous to the nonresident fee--because those examples actually had some rational basis--witness Needham submitted rebuttal testimony in a desperate attempt to salvage at least one example of a fee that supposedly is as discriminatory as the Postal Service's proposed nonresident fee. As the discussion below indicates, however, the Postal Service has not provided a single example of a fee, in either the public sector or the private sector, that shares the nonresident fee's blatant, arbitrary discrimination.

a. **"Some video rental stores within a chain charge a fee when customers rent a movie at one store and return it to another store."** USPS-T-7 at 37, lines 21-22. Witness Needham admitted, however, that the surcharge could exist to recover the cost of transporting videos back to the original store or correcting a resulting imbalance in inventory. Tr. 3/658 (DFC/USPS-T7-9(a)). Thus, witness Needham's example is not analogous to the nonresident post-office-box-fee proposal because letters that are delivered to a nonresident customer's post-office box in City X are not then transported back to the customer's residence in City Y. DFC/USPS-T7-17. Surprisingly, despite its irrelevance, this video example nevertheless made an encore appearance in witness Needham's rebuttal testimony when she identified the name of the movie-video chain that imposed this surcharge. Tr. 9/3455, lines 15-18 (USPS-RT-4 at 8). The example still, however, is useless.

b. **"Many banks provide Automated Teller Machine (ATM) cards to their customers which can be used at virtually all ATM machines. Many of these customers, however, will pay a**

transaction fee if they use their ATM card at a bank other than their own bank or branch of their main bank." USPS-T-7 at 38, lines 1-4. This example is worthless to this case. First, as witness Needham admits, the fee for using another bank's ATM may reflect the cost of the second bank's involvement in the transaction. Tr. 3/659 (DFC/USPS-T7-10(c)). In contrast, when a letter is delivered to a post-office box in City X for a customer who lives in City Y, the services of no agency other than the Postal Service are used from the time the letter is deposited with the Postal Service until it is delivered. DFC/USPS-T7-16.

Second, for transactions conducted at a bank's own ATM's, the analogous example to the proposed nonresident box fee would be a bank that does not charge a fee for using an ATM at the customer's own branch but that does charge a fee for using an ATM at another branch of that same bank. However, in writing her testimony, witness Needham apparently was referring to First Virginia Bank, which charges a fee for using an ATM at either the customer's branch or another branch of First Virginia Bank. Tr. 3/659 (DFC/USPS-T7-10(a)). Witness Needham's example is as useful for this case as knowing that a person must pay 32 cents to mail a letter in New York and 32 cents to mail a letter in Boston.

During oral cross-examination, I asked witness Needham to provide the example that would be analogous to this case. Tr. 3/759-60. She was not able to do so, nor could she provide an example in response to my written follow-up interrogatory. DFC/USPS-T7-15(a). Since the only example witness Needham provided us is not analogous to the proposed nonresident box fee, the ATM example is not an instance of discrimination that parallels the Postal Service's proposal.

c. Certain recreational programs set up by local county governments in Northern Virginia provide another example of nonresident fees. USPS-T-7 at 38, lines 8-9. At first, witness Needham admitted that she would not be surprised if funds from

local taxpayers were used to support these programs--in which case the example would not be analogous to the nonresident box fee because a local post office does not receive tax revenue from the local taxpayers. Tr. 3/661 (DFC/USPS-T7-11).

Then witness Needham submitted rebuttal testimony, in which she claimed that no local tax dollars are used for operating these programs. Tr. 9/3454, lines 7-8 (USPS-RT-4 at 7); Tr. 9/3455, lines 2-4 (USPS-RT-4 at 8). Importantly, however, witness Needham did not testify that taxpayer dollars were not used to finance capital expenditures in constructing facilities or otherwise starting up the Arlington County holiday programs. Moreover, witness Needham admitted that Fairfax County taxpayer money probably was used to construct park land; she could not confirm or deny that Fairfax County taxpayer money was used to construct the golf courses. Tr. 9/3474 at lines 21-25. Thus, at best, we do not know whether Fairfax County taxpayer funds were used to construct the golf courses; at worse, local funds were used. The Commission therefore has no evidence with which to conclude that the holiday programs or golf courses provide a parallel example of discrimination against nonresidents.

Even if the Arlington and Fairfax County examples were analogous, one certainly could argue that a county, unlike a federal institution such as the Postal Service, may properly endeavor to serve primarily its local residents. Witness Needham, however, attempts to justify the nonresident fees in another way. (My discussion here assumes, hypothetically, that residents did not in any way finance any expenditures--capital, operating, or otherwise--related to these programs.) Witness Needham claims that the nonresidents are willing to pay more than the residents for these services, perhaps because "other Northern Virginia county governments do not offer comparable camps when the schools are closed, and alternatives to these camps can be more costly and difficult to locate." Tr. 9/3454, lines 13-18 (USPS-RT-4 at 7). Witness Needham has no evidence, however, to

prove that residents, who currently have to pay \$112 for one program, would not also be willing to pay the nonresident fee, \$172--or more. See Tr. 9/3463 at line 25 and Tr. 9/3464 at lines 1-4, where witness Needham revealed the dollar amount of the fees. Indeed, since these camps presumably are more convenient for Arlington County residents than for residents of other counties, one quite logically could suspect that residents place a higher value on the camps than nonresidents, given the proximity. Even if the other facts necessary to make these county programs relevant to this case were true, witness Needham's example still would not be persuasive because she does not have the crucial information about the value placed on these programs by residents and nonresidents that she needs to draw her desired conclusion.

In summary, witness Needham has failed to provide a single example of discrimination against customers based on their residence status that is similar to the discrimination that the Postal Service proposes in this case.

6. In her testimony, witness Needham has already accidentally conceded the unfairness and inequity of the nonresident fee.

In her testimony in support of reducing the fee differential between Group I and Group II box fees, witness Needham explained that "From the customer's perspective, both offices provide exactly the same service in similar locations. It is not fair and equitable for one office to charge five times as much for the equivalent service." USPS-T-7 at 31, lines 12-14. As I explained in section II.B.3., supra, many customers would be subject to the nonresident fee even though they were receiving the same service, in a similar location, as customers who were not paying the nonresident fee. Under the proposed new box fees, a Group D, size 1 customer would pay \$52 per year with the nonresident fee, or \$16 without. USPS-T-7 at 4 (Table I) and USPS-T-7 at 6 (Table II). The nonresident would pay 325 percent

more for a similar service. A Group IC, size 1 box customer would pay \$86 per year with the nonresident fee, or \$50 without. The nonresident would pay 72 percent more for a similar service. Id. Unless there is something magical about "five times as much" being the threshold for a fee structure to be unfair and inequitable, by witness Needham's own argument and admission, the nonresident fee is unfair and inequitable. Moreover, a Group II customer seeking a nonresident box at a nearby Group IC office would pay 538 percent more (\$86 versus \$16)--or more than the "five times as much" that witness Needham admits would be unfair and inequitable.

In its reply brief, the Postal Service probably will try to distinguish the nonresident fee on the grounds that residents and nonresidents are receiving a different type of service. However, as I have explained in sections II.A. and II.B., supra, the Postal Service has failed to explain why nonresidents should be singled out for special fees. Indeed, as I have argued in section II.B.3., supra, the nonresident fee often would sting "nonresident" customers who live near "resident" customers, even though both customers receive a similar type of service. A fee certainly can be unfair and inequitable whether it imposes a five-fold differential for no rational reason or just a two-fold differential for no rational reason. Therefore, by witness Needham's own admission, the nonresident fee is unfair and inequitable.

- C. SINCE THE POSTAL SERVICE HAS PRODUCED NO EVIDENCE TO SUBSTANTIATE ITS CLAIM THAT NONRESIDENT BOXHOLDERS IMPOSE GREATER COSTS ON THE POSTAL SERVICE THAN RESIDENT BOXHOLDERS, ADDITIONAL COSTS ARE NOT REASONABLY ASSIGNABLE TO NONRESIDENT BOXHOLDERS UNDER 39 U.S.C. § 3622(b)(3).**

According to 39 U.S.C. § 3622(b)(3), each type of mail service must "bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class

or type." The key word is "reasonably." For the Postal Service reasonably to assign additional costs to nonresident boxholders, and therefore charge them a higher fee, the Postal Service must articulate a rational reason for singling out nonresident boxholders and charging them higher fees. As I have argued in section II.A., supra, the Postal Service has failed to explain why nonresidents should be treated differently. Therefore, no additional costs can be reasonably assigned to nonresident boxholders to justify a higher fee.

Additionally, if its nonresident-fee proposal were approved and implemented, the Postal Service's costs could increase. We have evidence that at least one boxholder, Mr. Richard Thomas, receives a large amount of mail-order catalogs and merchandise at his nonresident box, rather than at his street address. Tr. 8/2653-54. If he gave up his nonresident box, the Postal Service presumably would spend more to deliver his mail to his street address than to his box. Since nonresident boxholders potentially can lower the Postal Service's costs, the Postal Service cannot justify discouraging customers from engaging in possibly cost-reducing behavior.

- D. ALTHOUGH THE VALUE PROVIDED BY A MAIL SERVICE IS A CRITERION FOR RATE SETTING UNDER § 3622(b)(2), THE POSTAL SERVICE HAS NOT SUBSTANTIATED ITS CLAIM THAT NONRESIDENTS PLACE A HIGHER VALUE ON BOX SERVICE THAN RESIDENT BOXHOLDERS DO, NOR HAS IT PROVIDED ANY EVIDENCE TO SUPPORT ITS CLAIM THAT THE ADDITIONAL VALUE EQUALS \$36.**

As I explained in section II.A.1., supra, the Postal Service has not provided evidence comparing the value that nonresidents derive from their boxes with the value that residents derive from their boxes. As witness Ellard testified, a comparison about the behavior of two groups cannot be made without evidence about the behavior of each group. Tr. 2/385.

Moreover, while the \$36 nonresident fee supposedly was determined based on value, the Postal Service has offered no

evidence to substantiate witness Needham's claim that \$36 reflects the added value of service to nonresident boxholders. USPS-T-7 at 25, lines 1-3. In fact, during cross-examination witness Needham danced around the issue several times before finally admitting that she could cite no evidence or study to support the contention that \$1 per month (\$12 per year) or \$2 per month (\$24 per year) would not sufficiently reflect the added value to nonresidents of nonresident box service. Tr. 3/833, lines 23-25 and Tr. 3/834, line 1; also, see generally Tr. 3/832, line 10 through Tr. 3/834, line 1. This absence of evidence on value is particularly critical because the fee apparently is based on value, not on costs. Tr. 3/674 (OCA/USPS-T7-5).

Simply stated, the Postal Service has provided no evidence indicating that nonresidents place a higher value on box service than residents do. Furthermore, as Commissioner Haley aptly observed, for all we know the \$36 figure was pulled out of a hat. Tr. 3/873, lines 24-25. Thus, the evidence in the record does not provide support for the nonresident fee under § 3622(b)(2).

E. ALTHOUGH 39 U.S.C. § 3622(b)(4) AND § 54(a)(1) OF THE RULES OF PRACTICE REQUIRE THE COMMISSION TO CONSIDER THE EFFECT OF A RATE INCREASE ON THE GENERAL PUBLIC, THE POSTAL SERVICE HAS PROVIDED THE COMMISSION WITH INSUFFICIENT INFORMATION WITH WHICH TO MAKE THIS DETERMINATION.

We know that approximately 19 million customers rent post-office boxes from the Postal Service. USPS-T-4 at 5. Some subset of this group would be subject to the nonresident fee. Presumably, the number of customers who would be subject to the nonresident fee is significant; otherwise, the Postal Service probably would not have proposed the fee. In any event, participants and the Commission are unable to evaluate the number of customers who would be subject to the nonresident fee because the Postal Service has not even approximated the number of customers who would be affected by the proposal.

More importantly, to determine the effect of a fee increase on nonresident boxholders, the Commission should know why people obtain nonresident boxes. For example, in evaluating the Postal Service's request to eliminate special delivery, the Commission certainly will consider the reasons why people might use special delivery; the Commission then could determine the effect that elimination of the service would have on those customers. For the nonresident-fee proposal, however, the Postal Service has produced nothing other than scant anecdotal evidence explaining the reasons why some customers rent nonresident boxes.

My testimony, in fact, indicates precisely why evidence explaining the reasons why customers rent nonresident boxes is critical to the Commission's evaluation of the effect of this fee proposal on the general public. In my testimony, I explained that I have a nonresident box in nearby Berkeley because the short lobby hours of my local post office in Emeryville would prevent me from obtaining my mail on some weekdays and weekends. Tr. 8/2513, lines 10-14 (DFC at 2). Richard Thomas and Valerie Horwitz have a nonresident box due to insufficient lobby hours at their local post office. Tr. 8/2653 and Tr. 8/2520, lines 16-20 (DFC at 9).

Richard Thomas' situation, in fact, introduces a new wrinkle. Since he often is at work later than 6:00 PM, when his local post office closes, during the week he would have difficulty picking up the many parcels he receives, even if he used street delivery. His nonresident box located on the premises of Brookhaven National Laboratory seems to be the most efficient and timely way for Mr. Thomas to receive his mail--yet the Postal Service proposes to make him choose between the unacceptable street-delivery option or a surcharge for the "convenience" of his nonresident box.

Another reason why customers may obtain a nonresident box is poor delivery service. As I testified, delivery service is poor in Emeryville. Tr. 8/2513, lines 21-24 (DFC at 2); Tr. 8/2546

(USPS/DFC-5). My decision to be a nonresident boxholder was necessitated by shortcomings of my local post office that are not under my control; indeed, these conditions are at least partially under the control of the Postal Service. Many other postal facilities in the urban cities of Oakland and San Francisco have short lobby hours, while post offices in suburban areas tend to have longer hours of access. Tr. 2516 (DFC at 5); Tr. 8/2619-20.

Lastly, Mr. Stephen Holstein, who submitted a letter to the Commission's commenter file, indicates that he obtained a nonresident box in 1973 because (1) the post office he chose was closer to him than his "local" post office, (2) no boxes in the desired size were available in his "local" post office when he opened his box in 1973, (3) parking was easier at the "nonlocal" post office, and (4) traffic was lighter toward the "nonlocal" post office. Mr. Holstein quite understandably complains that the nonresident fee would penalize him for a rational decision that he made in 1973 to obtain service this his "local" post office was unable to provide. See Tr. 8/2522 (DFC at 11).

For all we know, most customers obtain nonresident boxes for the reasons why Valerie Horwitz, Richard Thomas, Stephen Holstein, and I have our nonresident boxes. Since not all postal facilities are equal, the Commission should not approve a fee increase that would penalize customers for escaping from shortcomings of their own post office; indeed, the fact that not all postal facilities are equal creates inequities that a nonresident fee would only exacerbate. Until the Postal Service presents evidence gathered in a statistically reliable manner explaining why customers obtain nonresident boxes, the Commission cannot possibly determine the effect of the nonresident fee on the general public, as required by § 3622(b)(4). For this reason alone, the Commission should reject this proposal.

Another serious obstacle has prevented participants and the Commission from evaluating the effect of the nonresident-fee proposal on the general public. In this case, the Postal Service

has failed to provide a stable definition of the term nonresident. The definition of nonresident is not, as the Postal Service argues, merely an issue appropriately deferred until implementation. Response of United States Postal Service to OCA Motion to Provide Draft Implementation Rules and Additional Witness (December 6, 1996). The definition of nonresident is at the heart of the proposal. If a nonresident were defined as a person who lived over 100 miles from the post office at which he sought to obtain box service, the cost and equity issues could be quite different than if a person, customer A, could be charged a nonresident fee for obtaining a box at a post office three blocks away from his house but in a different city--especially if a person living next to that post office, customer B, lived in Los Angeles and had 30 postal facilities from which to choose without paying a nonresident fee while customer A could choose from only his one post office for obtaining a box at no extra charge.

In this case, the potential effect of this proposal on the general public has changed significantly once already. For the first few months of the case, a nonresident was defined as a person who sought box service at a post office other than the one that served the five-digit ZIP Code area in which he lived. USPS-T-7 at 23, lines 20-21 and at 24, lines 1-2. Thus, the Postal Service was proposing to sting customers with a \$36 fee for obtaining box service at a station in another part of town that, perhaps, was closer to a customer's home or place of work than the facility that served his residence. This proposal raised serious fairness and equity issues, but at least anyone, anywhere, would be charged a nonresident fee for straying beyond the service boundary of his local postal facility.

In October, the definition of nonresident changed. The Postal Service decided to allow a person to be a resident of any facility under the jurisdiction of the post office that serves his residence or business. Suddenly, people who live in large cities would be able to obtain boxes anywhere in the city without

paying a nonresident fee, while customers of a single-facility post office--perhaps in a small suburb located adjacent to the large city--would have exactly one choice of location for obtaining a box. In section II.B.3., supra, I explained the unfairness and inequity of the revised definition. The point here is that the Commission will be unable, as required by law, to determine the effect of the proposal on the general public for as long as the Postal Service deems the definition of nonresident to be merely an issue of implementation and, moreover, subject to change. For this reason alone, the Commission could and should reject the nonresident-fee proposal.

Lastly, in Second Status Report of United States Postal Service on Implementation of Special Services Reform Proposals (December 13, 1996), the Postal Service apparently proposes to use post-office finance numbers as the basis for determining residency. Second Status Report at 3. The Postal Service does not explain why finance numbers, as opposed to the "jurisdiction of a post office," the term used in its first status report, is a better definition--or what the effect of this change might be.

Also, the Postal Service now apparently proposes a "proximity rule." Under the proximity rule, "if a customer's residence or business is closer to a post office than the office that provides their [sic] carrier delivery, they [sic] would be considered 'residents' at both offices." Notwithstanding the fact that the Postal Service still has not produced any evidence to justify a distinction between "resident" and "nonresident," one must wonder whether the Postal Service has any clue as to the potential cost of implementing such a rule. The Postal Service presumably would need to provide postal employees of every postal facility with a map or list that indicated, for every house or place of business, which postal facility was closest to that customer. In addition, would proximity be defined as straight-line distance, driving distance, or walking distance?

By introducing the proximity rule at such a late date, the Postal Service has denied participants the opportunity to inquire into these issues. Indeed, one wonders whether the Postal Service deliberately denied participants this right. I travelled from California to Washington to cross-examine witness Raymond on November 25, 1996, on the implementation plans. At that time, witness Raymond mentioned during redirect examination that the Postal Service was considering a proximity rule for non-city-delivery or non-delivery offices. Tr. 8/3300 at lines 8-25 and Tr. 8/3301 at lines 1-5. He reiterated during re-cross-examination that the rule was proposed in the context of non-city-delivery or non-delivery offices. Tr. 8/3305 at lines 22-25 and Tr. 8/3306 at lines 1-21. Now, in its second status report, the Postal Service apparently intends to apply the proximity rule in the context of city-delivery offices as well. The task force that issued that recommendation met on November 5-7 and November 20-21, before the hearing at which witness Raymond testified about the more-limited scope of the proximity rule. To say that the Postal Service denied my and the OCA's due-process right to inquire about the proximity rule by waiting until after the hearing to reveal the rule's true scope would be an understatement. In evaluating the nonresident-fee proposal, the Commission should consider the Postal Service's conduct.

III. POST-OFFICE-BOX FEES

A. THE PROPOSED POST-OFFICE-BOX FEES ARE AN UNFAIR, UNJUSTIFIED ASSAULT ON GROUP IC BOXHOLDERS.

As a Group IC, size 1, nonresident boxholder, I feel that I am under siege. In this case, the Postal Service proposes to raise my fees by 115 percent, from \$40 per year to \$86 per year. See USPS-T-7 at 5, line 32. If I were a resident boxholder, I still would face a hefty 25-percent fee increase, from \$20 to \$25. Id. at 3, line 32. Since approximately 30 percent of boxes in use nationwide are Group IC, size 1 boxes, this fee increase

would affect millions of boxholders.³ Therefore, it deserves the Commission's particularly close scrutiny.

Witness Callow testified that the Postal Service's proposal would increase the cost coverage for resident Group IC, size 1 boxes from an already high 142 percent to a hefty 161 percent. Tr. 5/1541, Table 2 (OCA-T-300 at 22). Cost coverages for Group IC, size 2 and 3 customers also would be disproportionately large, at 166 and 163 percent, respectively. Id. Group IC, size 1, 2, and 3 customers comprise approximately 46.9 percent of the boxes in use.⁴ The Postal Service has completely failed to explain why 46.9 percent of boxholders should be singled out, when compared to other box customers and users of all other postal services, to make such a large contribution to institutional costs.⁵

1. **The main reason for the proposed fee increase is blatantly obvious: to make money off of boxholders.**

The Postal Service's true motivation for the new fees probably is contained in two Washington Post articles, which reveal that the proposals for higher box fees arose after media attention focused on the high demand for boxes in certain locations. Tr. 8/2535-37 (OCA/DFC-1). Further support for this suspicion is contained in the Postal Service's frequent references to the media attention that boxes have received. See, e.g., USPS-T-7, section IX.

³See USPS-T-4 at 37, Table 14. I divided the number of Group I-C, size 1 boxes in use, 4,558,877, by the total number of boxes of all sizes in all groups, 15,211,509, to arrive at 30 percent.

⁴See USPS-T-4 at 37, Table 14. I first computed the total number of Group IC, size 1, 2, and 3 customers, 7,129,267 (4,558,877 + 1,928,614 + 641,776). Then I divided 7,129,267 by the total number of boxes of all sizes in all groups, 15,211,509, to arrive at 46.9 percent.

⁵I do not object to the changes in fees for Group II and Group III boxholders.

2. High CMRA fees are not evidence of the value of post-office-box service; therefore, CMRA fees cannot be used as evidence that post-office boxes are underpriced.

The Postal Service apparently is set to argue that the fees of Commercial Mail Receiving Agents (CMRA's) provide evidence as to the value of post-office-box service. See, e.g., Tr. 10/3648, lines 9-14 (USPS-RT-2 at 12). The Postal Service also apparently will argue that boxholders place a higher value on boxes than the current fees capture and that, therefore, the Commission can consider higher fees under 39 U.S.C. § 3622(b)(2). However, the comparison between CMRA's and post-office boxes is invalid.

To see why the comparison is not valid, one simply must consider the following puzzling question. Adopting as correct, for the sake of argument, witness Lion's rebuttal testimony concerning capacity at post offices, suppose that, indeed, 59.0 percent of installed size 1 boxes are at full capacity--that is, they are unavailable for renting to new customers. Tr. 9/3537, Table 3 (USPS-RT-3 at 9). Thus, even using the estimate of witness Lion that would be most favorable to the Postal Service, over 40 percent of size 1 boxes would be available. The fee for most size 1 boxes is either \$40 per year (30.0 percent of all boxes) or \$8 per year (33.8 percent of all boxes).⁶ On the other hand, the average annual fee for the smallest CMRA box is \$144.78. USPS-T-7 at 12, Table IV. The lowest CMRA fee anywhere is \$112.92. USPS-T-4 at 22, Table 11. Thus, 33.8 percent of Postal Service boxes are available for, on average, \$136.78 less than the average CMRA box,⁷ and 30.0 percent of Postal Service boxes are available for, on average, \$104.78 less than the

⁶Group II, size 1 claims 33.8 percent of all the boxes, of all types, that are in use. The fee for a Group II, size 1 box is \$8 per year. Group IC, size 1 claims 30.0 percent of all the boxes, of all types, that are in use. The fee for Group IC, size 1 boxes is \$40 per year. See USPS-T-7 at 5, Table I and USPS-T-4 at 7, Table 4.

⁷\$136.78 equals \$144.78, the average fee for the smallest CMRA box, minus \$8.

average CMRA box.⁸ If post-office-box service were comparable to CMRA service, why would any rational consumer obtain a CMRA box?

I am not an expert on CMRA boxes. However, I suspect that the answer to the question lies in the fact that CMRA's offer additional services that customers do not frequently find at post offices. Most CMRA's offer 24-hour access to boxes, personal access keys, call-in mail checking, mail forwarding, a copier, a fax machine, and packaging and supplies. USPS-T-4 at 24, Table 13. These services are considerably less frequently available at post offices. USPS-T-4 at 12, Table 8B. Moreover, CMRA's offer a street address, which allows for delivery by UPS, FedEx, and other non-USPS delivery services. Consumers must value these adjunct services; otherwise, they would not pay the higher fees. Since CMRA's clearly provide a different mix of services than post-office-box service, one cannot possibly cite higher CMRA fees as evidence that post-office-box service is underpriced. Yet the Postal Service apparently is attempting to do just that. The Commission must not accept this comparison.

Lastly, witness Taufique makes an interesting statement in his rebuttal testimony at 12, lines 13-14. Tr. 9/3449, lines 13-14 (USPS-RT-2 at 12). He states that "if box service did not have a high value of service, 39 U.S.C. 3622(b)(2), customers would not be flocking to CMRAs [footnote omitted]." Id. The issue in this case is whether Postal Service post-office-box service has a high value, not box service in general. Customers are "flocking" to CMRA's because the CMRA's provide a high value of service. This statement tells us nothing about the absolute value of post-office-box service; in fact, it merely allows us to conclude that post-office-box service is less valuable than CMRA box service. Indeed, if Postal Service box service were of low value, or overpriced, or both, one certainly would expect

⁸\$104.78 equals \$144.78, the average fee for the smallest CMRA box, minus \$40.

customers to "flock" to CMRA's. Witness Taufique's own statement is, if anything, evidence of the low value of Postal Service post-office-box service compared to the apparent value of CMRA service. Short lobby hours and poor service are, in fact, enough for me to consider a box in Emeryville to be of very low value. Tr. 8/2513-15 (DFC at 2-4).

B. THE POSTAL SERVICE HAS NOT PROVEN THE EXISTENCE OF A NATIONWIDE BOX SHORTAGE THAT WOULD JUSTIFY HIGHER FEES TO SUPPORT EXPANSION OF BOX SECTIONS.

The Postal Service apparently will argue that a serious problem of box shortages exists and that higher post-office-box fees are justified to help offset the cost of expanding box sections. See, e.g., Tr. 9/3544-46 (USPS-RT-3 at 16-18); see also USPS-T-7 at 25, lines 7-8, and at 42, lines 2-5, where witness Needham suggests that additional revenue from the nonresident fee could be used for box expansion. Evidence in the record is, however, insufficient to support the Postal Service's contention.

1. The preponderance of the evidence in the record suggests that a nationwide box-shortage problem does not exist.

Witness Lion testified that 38 percent of post offices have a capacity constraint in at least one box size. USPS-T-4 at 9, Table 6. While this figure indicates that some customers may not be able to obtain a box in the size they desire, it overstates the capacity problem because a capacity constraint in, say, a size 4 or 5 box would be inconsequential for a customer seeking a size 1 or 2 box that was available.

Using the same data, witness Callow testified that only 5.25 percent of post offices had no boxes of any size available. Tr. 5/1531, lines 5-7 (OCA-T-300 at 12). Moreover, only 5.47 percent of the offices had no boxes of size 1, 2, or 3 available. Id., lines 9-11. The focus on sizes 1, 2, and 3 is sensible because 98.6 percent of all boxes in use are size 1, 2, or 3. USPS-T-4

at 37, Table 14. While witness Callow's figure seems much more useful than witness Lion's figure, the value of witness Callow's figure depends on the extent to which customers consider different sizes of boxes to be substitutes. If a customer who seeks a size 1 box is willing to use a size 2 or size 3 box, too, witness Callow's figure would be quite accurate. If, on the other hand, a customer seeking a size 1 box would settle only for a size 2 or even only a size 1 box, witness Callow's figure would understate the capacity problem. If customers were never willing to substitute, the figures in the bottom row of witness Lion's Table 6 probably would be quite useful. USPS-T-4 at 9, Table 6.

Unfortunately, the only evidence in the record about the substitutability of box sizes is my own. I testified that I generally seek and accept only size 1 boxes, but that I might consider a size 2 box, at least while I was waiting for a size 1 box. Tr. 8/2628-30; Tr. 8/2583 (USPS/DFC-15). I do not know whether I am a representative customer. Some evidence suggests that I am not, to the extent that I plan ahead in my box-rental decisions. Tr. 8/2583 (USPS/DFC-15). In any event, the Commission needs more information about consumer behavior before it can evaluate the extent of the capacity constraints.

In his rebuttal testimony, witness Lion suggests that witness Callow's figures underestimate true capacity constraints because some boxes, although not rented to a customer, are nonetheless not available. Tr. 9/3531-38 (USPS-RT-3 at 3-10). Witness Lion's testimony is plausible. Nonetheless, it has two shortcomings, both related to the lack of evidence. First, it is possible that survey respondents counted as "in use" those boxes that were not available for rental. To the extent that this error occurred, witness Lion's capacity-utilization factor would double-count these out-of-service boxes and overstate the capacity problem. Secondly, witness Lion can only demonstrate the effect of various capacity-utilization factors; he cannot provide us with a precise number to use. Thus, participants and

the Commission are unable to determine the extent to which witness Callow's figure may or may not underestimate the box-shortage problem.

The Postal Service has the burden of proving that a box shortage exists. The original 38-percent figure is not a useful estimate of the capacity constraints. Witness Callow's figures of approximately 5 or 6 percent are more reliable, as are the figures in witness Lion's Table 6. Witness Callow's figure certainly has not been contradicted with evidence indicating that customers are not willing to substitute when the desired box size is unavailable. While witness Lion's rebuttal testimony plausibly casts some doubt on witness Callow's figures, it certainly does not give the Commission sufficient information with which to conclude that a significant nationwide box shortage exists.

2. **The mere fact that a post office has no boxes available in a particular size is not evidence that a shortage exists or that expansion is warranted.**

If a post office has no boxes available, it is quite possible that the market at that post office is in equilibrium; that is, supply equals demand. Expansion of the box section would not be warranted in this circumstance.

If a post office has no boxes available, the post office maintains a waiting list, and the waiting list is fairly short, this post office may not be experiencing a serious shortage. A box expansion almost certainly would not be warranted if the office had only a short waiting list.⁹ Also, customers might not be dissatisfied with a short wait for a post-office box.

I testified that the capacity constraints that I have experienced, personally, in obtaining boxes have been limited to

⁹To the extent that customers are turned away and do not place themselves on a waiting list, the waiting list would not be a completely accurate reflection of unsatisfied demand.

a wait of a "few weeks." Tr. 8/2631, lines 5-8. I doubt that any post office at which I have had a post-office box would have been a candidate for box expansion at the time that I obtained my box because a short waiting list suggests insignificant unmet demand.

- 3. In the absence of evidence indicating that a significant number of offices experiences box shortages severe enough to warrant box expansions, the Commission cannot approve a fee increase for the purpose of financing box-section expansions.**

Regardless of whether the Commission adopts witness Lion or witness Callow's figure--or some other figure--for estimating the extent of a nationwide box-shortage problem, that figure certainly must be reduced because, as explained in section III.B.2., supra, a capacity constraint does not necessarily imply either unsatisfied demand or a need for box expansions. If the Commission decides that higher box fees are warranted to finance box expansions, the Commission should not approve a fee increase for this purpose until it has evidence as to the extent to which box shortages are significant enough to warrant box expansions.

- C. THE COMMISSION SHOULD NOT APPROVE HIGHER FEES FOR BOXES UNLESS IT IS ASSURED THAT THOSE HIGHER FEES ACTUALLY WOULD BE USED FOR BOX EXPANSIONS.**

This point is straightforward: if the Postal Service justifies a fee increase by claiming that it needs the revenue to address a legitimate problem, the revenue must actually be spent to correct the problem. The Postal Service has provided no assurances, however, that revenues from higher box fees would, in fact, be spent to expand box sections. Tr. 3/692 (OCA/USPS-T7-22). Therefore, the Commission should reject the proposed fee increase for Group I boxes.

- D. WITNESS CALLOW'S PROPOSAL IS A FAIR AND EQUITABLE FEE SCHEDULE FOR BOXES.**

Witness Callow proposes a fair and equitable fee schedule for post-office boxes. He correctly supports the proposed 100-percent increase in Group II fees and the reduction in Group III fees to zero. Moreover, he recognizes that the Postal Service's reclassification case should be contribution-neutral. Tr. 5/1537 (OCA-T-300 at 18).

The Commission may or may not agree with the OCA's position that classification reform of post-office boxes outside an omnibus rate proceeding should be contribution-neutral. I indicated in section I., supra, that I support the OCA's position. Nonetheless, regardless of how the Commission rules on this policy issue, the Commission still should consider the most important contribution that witness Callow makes to the record: he exposes the unfair, disproportionately large burden for institutional costs that the Postal Service seeks to impose on Group IC boxholders.

As I explained earlier, the Postal Service's proposal would increase the cost coverage for resident Group IC, size 1 boxes from 142 percent to 161 percent. Tr. 5/1541, Table 2 (OCA-T-300 at 22). Cost coverages for Group IC, size 2 and 3 customers also would be disproportionately large, at 166 and 163 percent, respectively. Id. Cost coverages for Group IA, IB, and II boxholders would be significantly lower. Id. The trouble is, not only are Group IC boxholders already subject to a disproportionately large burden for institutional costs, the Postal Service has completely failed to explain why 46.9 percent¹⁰ of boxholders should be singled out to make an even greater contribution to institutional costs than they already are making. If anything, as witness Callow proposes, Group IC fees should be lowered.

¹⁰See footnote 4, supra.

IV. RETURN RECEIPT

A. THE PROPOSED CLASSIFICATION CHANGE FOR RETURN RECEIPT IS NOTHING MORE THAN AN UNJUSTIFIED FEE INCREASE DISGUISED AS AN UNWANTED SERVICE ENHANCEMENT.

1. The revised return-receipt service would provide every customer with a "service enhancement" that customers, when they were free to choose, overwhelmingly elected not to purchase.

For purposes of this discussion, customers of return-receipt service presently have two choices: (1) a return receipt showing to whom and date delivered, for a fee of \$1.10, or (2) a return receipt showing to whom, date delivered, and address, for a fee of \$1.50. USPS-T-8 at 74, Table XIX. Over 90 percent of customers choose option (1) for \$1.10 and reject the option to receive the address for an additional 40 cents. Tr. 4/1100-01 (OCA/USPS-T8-26). Nonetheless, the Postal Service proposes to eliminate option (1), modify option (2) to provide the address if different, and (3) raise the fee to \$1.50.

In evaluating the Postal Service's request, the Commission is required by 39 U.S.C. § 3622(b)(2) to consider the value of the mail service to the sender. Presently, customers are free to choose between options (1) and (2). No evidence has been introduced to suggest that customers do not have free choice. Exercising this free choice, they have rejected option (2), presumably because the address information is not worth the extra 40 cents to them. The Commission could hardly have clearer, more reliable evidence to indicate that this "service enhancement" is not worth 40 cents to customers. Therefore, the Commission should reject this fee increase.

Witness Needham does assert that some customers may be unaware of the address option. Tr. 4/1129-30 (OCA/USPS-T8-45(b)). However, she provides no evidence whatsoever to support her statement. In contrast, OCA witness Collins suggests that customers "receive an unambiguous message that the provision of a delivery address is available if desired" and that postal clerks

usually ask her whether she wants to purchase the additional services. Tr. 5/1706, lines 10-14 (OCA-T-400 at 17). Importantly, witness Needham also provides no evidence to suggest that customers, if initially unaware of the option but subsequently made aware of it, would purchase it. In fact, if anything, customers who do not read a Form 3811 return receipt carefully enough to see the address option may very well be less likely than the typical customer to care about receiving the address information.

2. Cost data do not support a 40-cent fee for this service enhancement.

As witness Collins explains, citing Postal Service data, the incremental cost of providing this new service for all return receipts would be not more than one cent; and in all likelihood, the cost would be closer to 0.27 cents. Tr. 5/1706-08 (OCA-T-400 at 17-19). A 40-cent fee increase for this new, mandatory service can hardly be justified; therefore, the Commission should reject the proposal.

3. The Postal Service apparently is not truly committed to providing quality return-receipt service.

Despite the other defects of this proposal, the 40-cent fee for this "service enhancement" would be more palatable if the Postal Service were committed to providing quality service.

If the Commission approves the Postal Service's requested reclassification of return-receipt service and the Postal Service implements it, customers who receive Form 3811 return receipts without a new address filled in will be able to conclude that either (1) the addressee's address has not changed, or (2) the addressee's address has changed, but the delivery employee failed to follow proper procedures and did not provide the new address. Unfortunately, customers will not know which one applies.

David Popkin spotted this problem and filed an interrogatory asking whether the Postal Service would place a box on the return receipt for the delivery employee to check to indicate affirmatively that the delivery address was the same. DBP/USPS-T1-8. In part (d) of his interrogatory, he suggested that the Postal Service could add value to the return-receipt service by eliminating the uncertainty I described above. Indeed, if the Postal Service added an "Address Unchanged" box, the customer would then know that the delivery employee took the time to compare the addresses. The interrogatory was redirected to witness Needham, who provided a nonresponsive and dismissive answer. Specifically, in her answer to part (c), she replied, "We have not had occasion to consider it." Id.

Mr. Popkin filed his interrogatory on August 9, 1996. The Postal Service did not file its response until August 23, 1996. Mr. Popkin raised a very good issue. Unfortunately, the Postal Service did not see fit to consider this legitimate question during this 14-day period or, to the best of our knowledge, at any time since August 23, 1996.

All of us know that the Postal Service is a large entity. Many employees are conscientious and make a serious effort to perform their jobs well. Nonetheless, in a large organization, problems do exist, and procedures are not always followed. For example, witness Needham cites the new "print name" block on accountable-mail signature forms as a service enhancement akin to the one proposed in this case. Tr. 4/1070 (OCA/USPS-T8-6). Personally, however, I have never been asked to print my name on a return receipt. In particular, I was not asked to print my name on any of the 11 return receipts that were involved in my response to USPS/DFC-16. The solution to possible problems with delivery employees forgetting to compare the addresses is to build in safeguards, such as the one that Mr. Popkin suggested. I have serious concerns that the "service enhancement" that the Postal Service proposes would not be carried out consistently

without the modification that Mr. Popkin implicitly suggests. A 40-cent fee increase is not warranted when the Postal Service dismissively rejects such good suggestions.

In fact, a 40-cent fee increase for return receipt that has no underlying cost justification should not be approved because the Postal Service is committing other misdeeds with respect to return receipt. Specifically, as Attachment 1 to DBP/USPS-T1-3 indicates, customers are complaining about return-receipt service. Moreover, the letter from Sandra D. Curran, acting manager of delivery, confirms that delivery arrangements exist with "large volume [sic] delivery points, including government agencies" that allow accountable mail to be handed over to the recipient "to be signed for at a 'later', more convenient time." Such practices conflict with the regulations and the purpose of return-receipt service--to provide the mailer with an independent confirmation of delivery and date of delivery. See DBP/USPS-T1-1(c). Even worse, Attachment 1 appears to allow these practices to continue: "Long standing, unofficial arrangements that promote exceptions to stated procedures for 'convenience' need to be reviewed and voided if necessary" [emphasis added]. *Id.* One must wonder why this letter from the acting manager of delivery does not require these practices to be voided, especially since this subject apparently receives repeated attention in rate cases. Even more troubling is the Postal Service's pattern of evasive answers concerning this subject. See POR No. 36 at 3; Douglas F. Carlson Motion to Compel Responses to Interrogatories to United States Postal Service (DFC/USPS-1-6); Douglas F. Carlson Request for Admission DFC/USPS-3-4; DBP/USPS-T8-14(k); and DBP/USPS-T1-3.

Return-receipt service has problems. One must hope that the Postal Service will take steps to improve service. Yet the Postal Service still has not even conducted the study on return receipt that the Commission recommended in Docket No. R90-1, despite the obvious fact, as demonstrated by Ms. Curran's letter,

that service problems exist. R90-1 Recommended Decision ¶ 6576, fn. 10. Especially given the other weaknesses of this Postal Service request, the Commission should not approve the Postal Service's request until the Postal Service at least takes the simple step suggested by Mr. Popkin and provides a box for the delivery employee to check to confirm that the delivery address has not changed.

4. The Commission should approve the classification change but maintain the current fee of \$1.10.

Witness Needham implies that two options exist: (1) raise the fee and not provide a service enhancement, or (2) raise the fee and provide a service enhancement. Witness Needham claims that customers would prefer the latter. Tr. 4/1100-01 (OCA/USPS-T8-26). In reality, the Commission has a third, superior option: recommend a service enhancement but maintain the current fee. If witness Needham's testimony about the benefits of "streamlining . . . the product offering" and providing correct address information has any merit, customers would be better off with this classification change than without it. USPS-T-8 at 87; Tr. 4/1070 (OCA/USPS-T8-6). As I explained in section IV.A.2., supra, the cost of approving the reclassification would be one cent or less. Indeed, the Postal Service probably would incur some cost savings to the extent that customers learned their correspondents' new addresses more quickly. Thus, the Commission should recommend the third option: a reclassification without the fee increase.

V. POSTAL CARDS

The Postal Service proposes a classification change to rename postal cards as "stamped cards." USPS-T-8 at 94-95. Along with the classification change, the Postal Service requests a two-cent fee to cover the manufacturing costs for postal cards. Id. at 95.

The Postal Service's request is totally unjustified. First, according to the Postal Service's own witness, manufacturing costs are already attributed to postal cards and, thus, are covered by the 20-cent rate for postal cards. A separate fee for the manufacturing cost of postal cards would be a double recovery for the Postal Service. Second, the Postal Service's own data reveal the considerably lower cost of processing postal cards versus post cards, presumably because postal cards are more compatible with automated sorting equipment than privately purchased post cards. Third, a postal clerk could not legally sell postal cards at a price higher than the amount of postage printed on the card without violating the law.

A. MANUFACTURING COSTS ARE ALREADY ATTRIBUTED TO POSTAL CARDS AND INCLUDED IN THE 20-CENT RATE. THEREFORE, AN ADDITIONAL TWO-CENT FEE WOULD PROVIDE A DOUBLE RECOVERY.

As OCA witness Collins explains, "GPO manufacturing costs are already included in the attributable costs for postal cards." Tr. 5/1711 (OCA-T-400 at 22, lines 7-8); Tr. 2/251 (OCA/USPS-T5-10). Moreover, no manufacturing costs were treated as institutional. Tr. 5/1711 (OCA-T-400 at 22, lines 11-15); Tr. 2/251 (OCA/USPS-T5-10). Customers who purchase postal cards thus are already compensating the Postal Service for the manufacturing costs of the cards. The Commission must deny the Postal Service's request and prevent an unjustified double-counting of these costs.

B. POSTAL CARDS COST CONSIDERABLY LESS TO PROCESS THAN PRIVATE POST CARDS. THEREFORE, IF ANYTHING, THE POSTAL SERVICE SHOULD BE PROPOSING A PRICE DECREASE TO ENCOURAGE CUSTOMERS TO USE POSTAL CARDS.

According to witness Patelunas, the per-piece cost for postal cards is 7.5 cents, while the per-piece cost for private cards is 16.2 cents. USPS-T-5C at 10; Tr. 5/1711 (OCA-T-400 at 22, lines 20-22). Witness Patelunas correctly suggests that postal cards cost less to process than private post cards because

postal cards are designed in a size and shape for automation compatibility. Tr. 2/252 (OCA/USPS-T5-11). Private post cards, in contrast, range from glossy picture post cards to index cards purchased at the drug store. Glossy post cards create processing problems because the slick paper retards the ink for the black Postnet bar codes that are sprayed on the front of the post cards and the orange RBCS ID bar codes that are sprayed on the back side. Often, a sticker must be placed on the front and/or back side of the card to allow a bar code to be sprayed--an extra step in processing. Index cards may be more flimsy than postal cards, thus interfering with automated processing.

The cost data tell the story. The Postal Service clearly should be encouraging customers to use its own postal cards, perhaps even by lowering the rate for postal cards. A two-cent fee increase for postal cards would only drive customers toward private cards that are more costly to process.

C. A SURCHARGE ON POSTAL CARDS IS INAPPROPRIATE BECAUSE CONSUMERS DO NOT HAVE READY ACCESS TO PRE-CUT CARD STOCKS THAT ARE AS COMPATIBLE WITH AUTOMATION AS POSTAL CARDS.

Even if manufacturing costs were not already included in the postal-card rate, the Postal Service's proposal would not be justified because it would drastically reduce consumer choice for an automation-compatible substitute post card. As the Postal Service's own cost data suggest, private post cards are considerably more costly to process than postal cards. Although we do not have any testimony in the case on the availability of substitutes for postal cards, the cost data do suggest that good substitutes are not readily available to consumers--given the high per-piece cost of processing private post cards.

Presently, the average customer who is not familiar with Postal Service automation receives the best service the Postal Service can offer post-card users just by purchasing and mailing a postal card. The Postal Service should be happy when customers

passively produce mail that is automation-compatible. If, however, the Postal Service imposes a two-cent surcharge on postal cards, customers may seek alternatives, such as commercially produced 4" x 6" index cards--or, even worse, 3" x 5" cards, which are too small to be mailed but often are mailed anyway. DMM § C010.1.2. These customers may not understand, in making this decision, that their mail may receive inferior service because their substitute card might be less compatible with automation than a postal card.

Customers should not be held responsible for the limitations of Postal Service automation. Customers can easily prepare letters that are fully compatible with automation. However, the nature of post cards prevents such ease of conformity. Postal cards are an excellent means by which the average, automation-ignorant customer can mail post cards and meet the physical demands of automated sorting equipment. The Postal Service's proposal would turn away cost-conscious but automation-ignorant customers who seek to mail post cards and receive quality service; these customers would, unwittingly, receive poorer service and give the Postal Service mail that is more expensive to process. The Commission should carefully consider this potential effect on consumers, as required by 39 U.S.C. § 3622(b)(4), as well as the significant possibility that the two-cent surcharge for stamped cards would affect consumer behavior in a way that ultimately would drive up the cost of processing post cards.

D. THE COMMISSION SHOULD NOT APPROVE THE PROPOSED SURCHARGE FOR POSTAL CARDS BECAUSE ANY POSTAL CLERK WHO SOLD THE CARDS WOULD BE IN VIOLATION OF THE LAW.

As David Popkin indicated in an earlier motion to dismiss the Postal Service's request for a surcharge on postal cards,¹¹ 18 U.S.C. § 1721 prohibits a postal employee from selling postal

¹¹Motion to Dismiss (August 9, 1996).

cards at a price higher than the value indicated on the face of the postal card.

In its answer to Mr. Popkin's motion,¹² the Postal Service claimed that the legislative history of 18 U.S.C. § 1721 indicates that the purpose of the statute is to protect against "fraudulent salary inflation by postal employees." Answer at 4-7. However, the legislative history that the Postal Service cites is far from conclusive.

While there is some indication that Congress adopted this statute for the reason that the Postal Service sets forth,¹³ the fact that Congress did not amend this section when Congress passed the Postal Reorganization Act and created the current ratemaking procedures suggests that Congress intended to require that postal cards be sold for the value of the postage printed on the card, perhaps because the postal card is a unique type of product for which few acceptable alternatives are available. The 1918 Opinion of the Solicitor of the Post Office Department that the Postal Service cited in its answer hardly carries the persuasive weight that an opinion from a federal court would. Answer at 6-7.

The Commission can and should consider this statute under 39 U.S.C. § 3622(8) and § 3623(6) as it evaluates the Postal Service's request for a two-cent surcharge on postal cards. Without a court opinion, the Commission should not conclude either that this fee increase would not be inconsistent with Congress' intent or that a postal clerk could legally sell these surcharged postal cards.

I have already identified several problems with the Postal Service's request for a two-cent surcharge on postal cards. This statute, and the problems and unresolved issues that it creates,

¹²Answer in Opposition to Motion of David B. Popkin to Dismiss (August 16, 1996).

¹³See Answer at 5.

provides the Commission with yet another reason not to approve the Postal Service's request.

VI. CONCLUSION

The Postal Service's request to increase fees for certain special services outside an omnibus rate case should be rejected because it represents bad policy. The Commission cannot reliably determine a fair and equitable allocation of institutional costs without examining all rates and fees at once.¹⁴ This request, in fact, is an example of the problem that fee increases outside an omnibus case can create, since the Postal Service clearly has singled out certain people (e.g., nonresident boxholders) and services (e.g., post-office boxes) for hefty fee increases. The fairness of these requested fee increases could be evaluated more accurately in an omnibus proceeding.

In reality, for the four proposals that I have addressed in this brief, the Commission does not even need to rule on whether fee increases outside an omnibus proceeding are appropriate. The proposed nonresident box fee, the proposed fee increase for Group I boxholders, the proposed reclassification and accompanying fee increase for return receipt, and the proposed two-cent surcharge on postal cards are completely unjustified. Indeed, at least one proposal, the nonresident box fee, is unfair, inequitable, arbitrary, and discriminatory.

Since most individual customers do not become involved in rate cases, on behalf of the general public I strongly urge the Commission to exercise its responsibility to protect the public from unfair, inequitable, or otherwise inappropriate rate

¹⁴The Commission probably could determine the fairness and equity of the proposed fee changes for Group II and Group III boxes just by comparing these fees to the Group I fees, since they represent an extreme case. Therefore, I would not object to these changes being made outside an omnibus case.

increases and reject the fee increases and reclassifications that the Postal Service proposes in this case.¹⁵

¹⁵See footnote 14, supra.

CERTIFICATE OF SERVICE

006419

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the Rules of Practice* and section 3(B)(3) of the Special Rules of Practice.



DOUGLAS F. CARLSON

January 14, 1997
Emeryville, California

*On December 30, 1996, I mailed a letter to 21 persons on the service list, asking if they would be willing to waive their right to receive a hard copy of my initial brief and reply brief, in order to allow me to reduce duplicating and mailing expenses. I have filed a copy of the letter in LR-DFC-2. LR-DFC-2 also contains photocopies of the reply post cards I received from the persons who did waive their right.

Therefore, I have not served hard copies of this brief to those parties who voluntarily waived their right to receive it.